

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Daniel Boothby

v.

Civil No. 10-cv-424-JL

Erik Jorgensen, William Duffy,  
Lee Houston, John O'Brien,  
New Hampshire Department of  
Corrections, and Jeffrey Bettez


**O R D E R**

The defendants in this action, in which plaintiff asserts an Eighth Amendment claim under 42 U.S.C. § 1983 and a state-law claim for common-law assault, have moved to have one of their witnesses, Joshua Matheson, declared unavailable pursuant to Fed. R. Evid. 804(a)(5) and (b)(6) so that they may offer his prior statements in lieu of testimony at trial. Defendants argue that Matheson, who, like plaintiff, was an inmate at the New Hampshire State Prison at the time of the events giving rise to this case, is unavailable because he has expressed an "extreme fear for his safety" if he testifies against plaintiff.

The motion (document no. 42) is denied. Based upon the facts related in defendants' supporting memorandum and exhibits, the court is not persuaded that Matheson is in danger if he testifies at trial, that the alleged attacks against him are in any way related to his statements regarding plaintiff, or that the New Hampshire Attorney General is not well equipped and

positioned to provide sufficient assurances or protections to allay Matheson's fears.

**SO ORDERED.**

  
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Joseph N. Laplante  
United States District Judge

Dated: May 23, 2012

cc: Michael J. Sheehan, Esq.  
Nancy J. Smith, Esq.  
Rebecca L. Woodard, Esq.